

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

**JODIE MARTUCCI,** )  
v. )  
Plaintiff, )  
v. )  
**P & A TRANSPORTATIONS, INC.,** )  
**and JOSE LUIS COUTO OLIVARES,** )  
Defendant. )  
Case No. CIV-12-402-Raw

## **ORDER**

Before the court is the motion of the defendant P & A Transportations, Inc. (“P & A”), for partial summary judgment. This case arises out of a vehicular accident which took place on November 28, 2011. Plaintiff alleges that P & A is responsible for the acts of its driver Jose Olivares (“Olivares”) through *respondeat superior* and that it is independently negligent for hiring, training and supervising Olivares.

In the present motion, P & A contends that under Oklahoma law plaintiff may not hold these separate claims if the employer stipulates that the employee was working within the scope of his agency at the time of the accident. The court agrees with movant. "Because the City stipulates that Noe was acting within the scope of his employment, and that vicarious liability pursuant to the respondeat superior doctrine is therefore applicable, the cause of action for negligent hiring, training, and supervision is not available." *Morris v. City of Sapulpa*, 2011 WL 1627098 (N.D.Oklahoma 2011)(citing *Jordan v. Cates*, 935 P.2d 289, 292

(Okla.1997) and *Landreville v. Joe Brown Co., Inc.*, 2009 WL 1437801 (E.D.Okla.2009)(Magistrate Judge West)).\*

Plaintiff correctly notes that Rule 8 permits a plaintiff to pursue alternative theories of recovery. “Rule 8 is a pleading standard and the fact that a plaintiff may plead claims in the alternative is immaterial to whether a plaintiff is subsequently entitled to judgment as a matter of law on any one particular claim”. *Avery v. Roadrunner Transp. Services, Inc.*, 2012 WL 6016899 (W.D.Okla.2012). Defendant’s motion is well-taken.

It is the order of the court that the motion for partial summary judgment (#47) is granted. Defendant P & A Transportations, Inc. having stipulated to vicarious liability, plaintiff may not proceed as to any additional negligence theories of recovery as to that defendant.

**ORDERED THIS 6th DAY OF MAY, 2013.**

**Dated this 6<sup>th</sup> day of May, 2013.**



Ronald A. White  
United States District Judge  
Eastern District of Oklahoma

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\*P & A has presented its stipulation within the present motion.